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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,541	02/24/2004	Thomas J. Campanaro	108607-03CIP	1531
27189 7590 01/25/2007 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101			EXAMINER HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/785,541

Applicant(s)

CAMPANARO ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/24/04, 8/12/05, 12/20/05</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to because the specification at page 10, lines 27-28 describe an upper flange 820 of the upper rails 230 that prevent the farther pivoting of the brackets 790 of the folding foot platform 700 in Figs. 10A and 10B, and this does not seem to be what is shown.

The drawings of Figs. 10A and 10B appear to show a lower flange on the bracket 790 that engages the lower surface of the upper rails 230 to prevent the farther pivoting of the brackets 790 of the folding foot platform 700. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: --Method of Using A Collapsible Exercise Device--.

3. The disclosure is objected to because of the following informalities:

on page 1, line 4, the status of U.S. Application 10/376,044 should be updated;

on page 4, lines 5 and 6, each occurrence of “pulley” presumably should be changed to --pulley--;

on page 5, line 6, the entire line presumably should be deleted since a brief description of Figs. 5C and 5D have been made in paragraphs numbered [23] and [24];

on page 5, line 20, “unretracted” presumably should be changed to --retracted--;

on page 7, line 28, “380” presumably should be changed to --385--;

on page 9, line 4, “360” presumably should be changed to --360--; and

on page 12, lines 6 and 7, each occurrence of “1002” presumably should be changed to --1001--.

Appropriate correction is required.

***Claim Objections***

4. Claim 12 is objected to because of the following informalities: on lines 2 and 3 of the claim, each occurrence of “pulley” presumably should be changed to --pulley--. Appropriate correction is required.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-11 and 13-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,921,355 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-12 of the patent provide a collapsible exercise device having all of the limitations required in the method claims of the instant application, and provided the required collapsible exercise device, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the collapsible exercise device in the same manner as claimed. Though using the collapsible exercise device for personal training (claim 13); for group training (claim 14); for Pilates (claim 15); for rehabilitation (claim 16); or adjusting the height in accordance with a resistance chart (claim 17) are not disclosed in the claims of the

patent, each manner of use is well known in the exerciser art and would have been obvious to one having ordinary skill in the art.

7. Claim 12 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,921,355 B2 in view of *Morgon et al.* (US Pat. 6,786,847 B1). Claims 1-12 of U.S. Patent No. 6,921,355 B2 has been discussed above, and such discussion is incorporated herein. Claims 1-12 of U.S. Patent No. 6,921,355 B2 disclose the inventive method as claimed except for the vertical support member including an automatic lift mechanism including a drive mechanism, upper and lower pulley assemblies, opposite vertical chains carried by the pulleys, the adjustable incline coupled to the opposite vertical chains, and positioning the first end of the adjustable incline at a desired height includes moving the first end of the adjustable incline up and down with the automatic lift mechanism.

*Morgon et al.* discloses an adjustable incline 12 positioned at its first end at a desired height by an automatic lift mechanism 20. A motorized drive system includes a reversible motor driving a chain loop around upper and lower sprockets. The chain is coupled to an end of the adjustable incline. The automatic lift mechanism 20 permits a user to adjust the incline of the adjustable incline without dismounting from the moving support platform (Abstract and col. 3, lines 35-58).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the collapsible exercise device of claims 1-12 of U.S. Patent No. 6,921,355 B2 with the automatic lift mechanism of *Morgon et al.*, in order to permit a user to

automatically adjust the incline of the adjustable incline without dismounting from the moving support platform.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

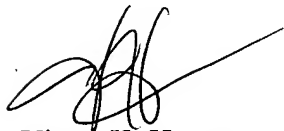
*Martucci* (US Pat. 3,892,404), *Schliep* (US Pat. 4,383,684), *Van Straaten* (US Pat. 4,911,438), *Luecke* (US Pat. 5,066,005), *Lundin* (US Pat. 5,620,403), *Jacobsen* (US Pat. 5,906,564), *Stevens* (US Pat. 5,938,571), *Jacobsen* (US Pat. 6,634,996 B2), *Chen et al.* (US Pat. 6,692,412 B2), *Thompson* (US Pat. 6,767,314 B2), *McVay et al.* (US Pat. App. Pub. 2005/0159278 A1), *Arbuckle et al.* (US Pat. 7,104,937 B2) and *Endelman* (US Pat. 7,125,369 B2) disclose exercise devices having some of the relevant features that are provided for in the claimed invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang  
January 19, 2007



(JACKIE) TAN-UYEN HO  
PRIMARY EXAMINER  
1/22/07